IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 141 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
RASIKLAL R BAROT - Defendant(s)

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Appearance :
MR ND GOHIL, AGP for Appellant(s) : 1,
MR PH PATHAK for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/12/2006

ORAL JUDGMENT

1. Shri N.D.Gohel, learned AGP for the appellant. None for the respondent, the Court proposes to proceed exparte against the respondent.

2. The respondent - plaintiff was appointed as Peon temporarily for a period of 18 days with effect from 1.8.81 to 18.8.81 vide order dated 31.7.81 [Exh.63] in the office of the Assistant Weights & Measures Controller Office, Junagadh and continued upto 1985 on temporary basis. On 29.4.82, certain interviews to the post of Peon were held, as the respondent's name was not forwarded by the Employment Exchange, his case was not considered, but cases of others were considered and some people were appointed. The interviews were held on 29.4.82. The respondent-plaintiff filed Regular Civil Suit No. 292 of 1982 in the court of learned Civil Judge [Senior Division], Junagadh. On 8.4.85, oral order of termination of service was made, however, the suit filed by the plaintiff-respondent was decreed on 13.9.86. Being aggrieved by the above judgment and decree, the present appellant-State filed Regular Civil Appeal No. 167 of 1986 which was disposed of by the learned Extra Assistant Judge on 24.1.89. Being aggrieved by the said judgment and decree, the appellant has filed the

present appeal, which has been admitted for hearing the parties on the following substantial question of law.

1. Whether in the facts and circumstances of the present case the lower appellate court has erred in law in holding that the plaintiff had right to appointment?
2. Whether in the facts and circumstances of the present case, the lower appellate court has erred in holding that the plaintiff's name ought to have been added to the select list without his name being recommended by the Employment Exchange Office after following regular procedure?
3. Whether in the facts and circumstances of the present case the lower appellate court has erred in awarding back wages to the plaintiff?

3. Shri Gohel, learned AGP for the appellant State submits that the present respondent-plaintiff was appointed temporarily on the post of Peon

for a period of 18 days only and under the circumstances, the suit could not be decreed in his favour. His further submission is that at the time of regular appointments if the plaintiff's name was not referred by the Employment Exchange, then his case could not be considered by the appointing authority. It is submitted by him that in any case, a person who was appointed for a fixed period or was temporarily appointed without following the rules for appointment, would not acquire any rights in his favour and such person can be removed.

4. At this stage, Mr. P.H. Pathak, learned counsel for the respondent appears and submits that because of the plaintiff's temporary appointment, his name was deleted from the rolls of the Employment Exchange and under the circumstances, his name could not be referred by the Employment Exchange. He submits that the two courts below were justified in decreeing the suit.

5. In the matter of Secretary, State of Karnataka

and Ors. v. Umadevi, [A.I.R. 2006 SC 1806], the Supreme Court has clearly observed that a person who has been appointed in violation of the rules, without following the rules or de hors the rules would not be entitled to any order from any Court. In the present case, it is to be seen that the plaintiff was appointed hardly for a period of 18 days though continued up to 1985 on temporary appointment, he claims permanency in service. In view of the judgment of the Supreme Court, no relief can be granted to the plaintiff.

6. So far as the arguments of the learned counsel for the respondent are concerned, same would not provide any foundation in favour of the plaintiff, because, the plaintiff never joined the Employment Exchange as party defendant nor had claimed any relief against the Employment Exchange that simply on the plaintiff's appointment on temporary basis for a short period, his name could not removed from the rolls of the Employment Exchange.

7. The two courts below erred in holding that the

plaintiff had a right to appointment and further erred in holding that the plaintiff's name ought to have been added to the select list. Once the plaintiff is held not entitled to appointment or reinstatement, the question of back wages would not arise.

8. The appeal deserves to and is accordingly allowed. The impugned judgment and decree passed by the court below are accordingly set aside. The appeal is allowed. No costs.

9. Let a decree be framed accordingly.

[R.S. GARG, J.]

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